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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

18 Cr. 319 (SHS)

5 CHRISTIAN PABON,

6
7 Defendant.

8 Sentence

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9
10 New York, N.Y.
November 9, 2022
11 5:00 p.m.

12 Before:

13 HON. SIDNEY H. STEIN,

14 District Judge

15 APPEARANCES

16 DAMIAN WILLIAMS

17 United States Attorney for the
Southern District of New York

18 BY: ELIZABETH A. ESPINOSA

RUSHMI BHASKARAN

19 Assistant United States Attorneys

20 ROTHMAN, SCHNEIDER, SOLOWAY & STERN, LLP

Attorneys for Defendant

21 BY: JEREMY SCHNEIDER

22 ELIZABETH E. MACEDONIO, P.C.

Attorneys for Defendant

23 BY: ELIZABETH E. MACEDONIO

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(Case called; appearances noted)

THE COURT: Mr. Pabon is here. Please be seated in the courtroom. We're here for the sentencing of Mr. Pabon, but my deputy tells me there's an issue that the defense wishes to raise. Sir.

MR. SCHNEIDER: Yes. Thank you, your Honor.

Ms. Macedonio and I spoke to Mr. Pabon today, and he has informed us that he would request your Honor exercise its discretion and grant postponement to the sentence for the following reasons:

He still has not been able to -- because of the lockdown at MDC, he hasn't had a chance to get all the paperwork that he needs, whether they be transcripts or documents or motions that he would like to have prior to sentence. Also, if he happens to get designated and shipped out. It's much more difficult to get the property that he needs, paperwork there as opposed to having it with him.

THE COURT: What is the paperwork? Well, why don't you tell me if there are a series of reasons, what they are, so that I can evaluate them.

One reason is he doesn't have paperwork that he wants?

MR. SCHNEIDER: Correct, your Honor.

THE COURT: What does that mean, do you know?

MR. SCHNEIDER: Transcripts, docket sheets.

THE COURT: Do you have everything you believe you

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1 need?

2 MR. SCHNEIDER: Me personally?

3 THE COURT: Yes.

4 MR. SCHNEIDER: I believe I have, yes.

5 THE COURT: His lawyer.

6 MR. SCHNEIDER: I'm his lawyer, yes. Ms. Macedonio
7 and I have do have whatever we need, yes.

8 THE COURT: Have you talked to him about what he
9 thinks he wants you to have in addition?

10 MR. SCHNEIDER: It's not but what we need. It's about
11 what he wants, your Honor. He hasn't seen the trial
12 transcript. That's what he wants. I have it. Ms. Macedonio
13 has it, but he's talking about what he needs, not what he
14 thinks I need. That's not the issue, your Honor.

15 The second issue, your Honor, while you see he does
16 have family here in court --

17 THE COURT: And I would think that's a reason to
18 proceed with the sentencing here today. I do see he has family
19 here today.

20 MR. SCHNEIDER: Comma, but there are other family
21 members who were. Because his sentence has been postponed a
22 number of times and they took off those times, they could not
23 be here. So he would like the other family members to be here
24 as well. And the final reason, your Honor, is because of Covid
25 and a number of lockdowns at the MDC, he hasn't had sufficient

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1 time to have family visits with his family while he's here
2 before he gets designated to discuss what's about to happen.

3 THE COURT: To discuss what?

4 MR. SCHNEIDER: To discuss what's about to happen to
5 him. He's going to get life. Every knows that, okay. So
6 because family visits have been severely restricted, if not
7 altogether eliminated because of Covid and a number of various
8 lockdowns, he has not had family visits in many, many months,
9 and sometimes even, I think, years at a time.

10 THE COURT: Wait. Let me try to understand. He has
11 not had family visits because of lockdowns --

12 MR. SCHNEIDER: Yes.

13 THE COURT: -- for an adequate number of family
14 visits. I understand that. That makes sense to me. As a
15 result of the lack of family visits that he would like to have,
16 why is he asking for an adjournment?

17 MR. SCHNEIDER: He's asking so he can remain at the
18 MDC so he can, A, have the paperwork that he wants; and B,
19 speak to his family and see his family before he gets
20 designated. Because there's a chance that he may get
21 designated far away no matter what your Honor may or may not
22 recommend.

23 As your Honor may remember from our submissions, his
24 family has certain health conditions, as does he. So given
25 that, he would like to spend some more time with his family

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1 before he's shipped away to a BOP designation.

2 THE COURT: Well, that can be taken care of. First of
3 all, most defendants want to get out of the MDC as quickly as
4 possible.

5 MR. SCHNEIDER: Understood.

6 THE COURT: And indeed, recently, I have been
7 recommending to the BOP that the defendant who I would have
8 just been sentenced be sent to the permanent institution as
9 quickly as -- as expeditiously as feasible because the theory
10 is there's more programming available. There's more
11 educational programming available. There's more vocational
12 programming available. There's more outdoor space and outdoor
13 exercises and exercise facilities. By and large, those
14 facilities are much better for defendants than the MDC.

15 MR. SCHNEIDER: Mr. Pabon and I have discussed that,
16 and just that issue as you're speaking about it right now. And
17 knowing that, he still has asked Ms. Macedonio and I to jointly
18 recommend.

19 THE COURT: All right. Thank you. Is there another
20 reason, sir?

21 MR. SCHNEIDER: No, those are the reasons that he's
22 articulated to me.

23 MS. MACEDONIO: May we have one moment, your Honor?

24 THE COURT: Yes, of course. What was reason number
25 two? My notes say postponement, that was to talk to the

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1 family.

2 MR. SCHNEIDER: Yes, he had other families who could
3 not be here because they are worked. that was the second
4 reason.

5 THE COURT: Talk to him.

6 (Pause)

7 MR. SCHNEIDER: Your Honor, there's another reason,
8 which I guess is kind of like a non -- he wants his family to
9 be ready for this, okay. That's kind of where we are. He
10 wants, as we all know -- and I'm going to say it again later --
11 there's no surprise as to what sentence he's going to get. But
12 he wants to be able to prepare himself, and mostly his family
13 with what's about to happen. And he thinks by having more
14 visits with them in a situation that is more conducive to his
15 custody prior to the sentence, he thinks that it would be
16 easier for his family and him to fully grasp, comprehend and
17 accept the sentence that he's about to get.

18 THE COURT: I understand that. Does anyone know how
19 many adjournments of this sentencing there have been, and when
20 it was first scheduled for?

21 MR. SCHNEIDER: If you give me a few minutes.

22 THE COURT: My deputy is looking at that as well.

23 MR. SCHNEIDER: Your Honor, I think I may have a
24 answer for you if you need.

25 THE COURT: Yes.

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1 MR. SCHNEIDER: I believe it was originally scheduled
2 for October 13, and then it was postponed to November 2nd, and
3 then it was postponed to November 3rd, and then November 9th.

4 THE COURT: Our notes, my deputy indicates that the
5 ECF indicates that it was originally scheduled for August 18th.
6 It was then adjourned to October 13th, at the request of the
7 defense. So it was originally set for August 18th, then
8 adjourned to October 13th, at the request of the defendant.
9 And then adjourned at the request of the defendant to November
10 2nd, maybe the 3rd. And then because I had trial last week, it
11 was then adjourned by the Court to today, so the process has
12 been going on since August 18th.

13 I'm sympathetic to the defendant's requests, but I'm
14 denying the request for the adjournment. The attorneys have
15 everything they need. They've indicated that the defendant can
16 be given access to the trial record. He certainly can take a
17 look at that. He's entitled to it. The postponement so that
18 other family members can be here because there were other dates
19 that were scheduled where they did come, so now they can't
20 come. I understand that as well, but presumably it's always
21 possible that there always will be additional family, some
22 family members, who can't come to court.

23 I appreciate the fact the family members are here in
24 support of the defendant. It's important for the defendant to
25 see that, but I don't think it's a adequate reason to postpone

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1 this sentencing because some family members are not here even
2 though some are.

3 In terms of he wishes to stay where he is. Again,
4 most people want to get out of the MDC as quickly as possible
5 given the conditions of confinement there. If this defendant
6 wants to remain, I certainly will recommend that at his request
7 he be retained for, let's say, additional two months consistent
8 with BOP requirements in order for him to see his family. But,
9 again, that will always be the case. It's always good to have
10 family visits. And so I'm denying the request for an
11 adjournment.

12 It's time, and I think the other point is as
13 Mr. Schneider has said several times, everyone knows what's
14 going to happen under the statute. The defendant is going to
15 be sentenced to life imprisonment, and that was going to happen
16 whether it's today or whether we adjourn it. Given the fact
17 that it's been adjourned a number of times, I'm going to deny
18 the request for an adjournment.

19 Now, I have the following information. I have the
20 presentence report revised on August 17th, along with the
21 addendum and the sentencing recommendation on an offense level
22 of 43, and criminal history category of II, of a guideline
23 range of life incarceration on each of Counts One and Two to be
24 served concurrently. In addition to that, I have the defense
25 submission of Mr. Schneider dated September 22, which is ECF

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1 document 581. The PSR is ECF document 577, and the defense
2 submission understands that there's a mandatory life sentence
3 here, that's at page seven in the conclusion. But the
4 submission says accordingly the defense respectfully submits
5 that a mandatory life sentence is greater than necessary and
6 flies in the face of the goals sought in 18 U.S.C. 3553(a)(2).
7 Their request there is that you be sentenced to a facility in
8 the northeast region, and I certainly will grant that
9 recommendation.

10 MR. SCHNEIDER: Your Honor, I'm sorry, just about
11 that. After speaking to Mr. Pabon, he has asked us to withdraw
12 that request.

13 THE COURT: All right. Then I won't. And the
14 submission dated September 22, contains a number of letters in
15 support of Mr. Pabon, and they're quite heartfelt and I've read
16 all of them obviously.

17 MR. SCHNEIDER: Your Honor, I really apologize for
18 interrupting. Mr. Pabon informs me that he wants that
19 recommendation that he be --

20 THE COURT: You'll talk to the client. And at the end
21 of the sentence when I make the recommendations to the Bureau
22 of Prisons, you can let me know what the defense is requesting.

23 MR. SCHNEIDER: I apologize. Thank you.

24 THE COURT: That's all right. I also have a response
25 of the government dated September 29, which is document 582.

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1 The conclusion is the mandatory life, according to the
2 government, for the reasons set forth above, the mandatory
3 sentence of life imprisonment is sufficient, but not greater
4 than necessary to serve the legitimate purposes of sentencing.

5 I also should note that I have the government's letter
6 dated August 31, which is ECF 580. I'll refer to it as the
7 relative culpability letter which the government sets forth its
8 view of the relative culpability of the various co-defendants
9 in this case and in 17 Cr. 513.

10 Mr. Schneider, is there any additional information I
11 should have, written information I should have?

12 MR. SCHNEIDER: Not written.

13 MS. ESPINOSA: Your Honor, the government yesterday or
14 the day before, a victim impact statement.

15 THE COURT: I'm sorry. Yes, I do have that. I should
16 have mentioned that. It's a victim impact statement, very
17 heartfelt given to me yesterday. Mr. Schneider, I take it you
18 have that?

19 MR. SCHNEIDER: I have seen it, yes.

20 THE COURT: All right. That's all the written
21 information I have. Government, that's it, in terms of the
22 written information the government believes I should have?

23 MS. ESPINOSA: Yes, your Honor.

24 THE COURT: Mr. Schneider, have you and your client
25 read and discussed all this information?

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1 MR. SCHNEIDER: Yes, your Honor.

2 THE COURT: Do either you or he have any objections to
3 the findings of facts in the presentence report?

4 MR. SCHNEIDER: The only issue with the findings of
5 fact is that the case went to trial, so there's certain -- they
6 took the testimony. They took the information in the PSR from
7 the trial testimony, which we may -- of course he went to
8 trial, obviously he disagreed with.

9 THE COURT: That I understand.

10 MR. SCHNEIDER: Other than that, nothing other than
11 that.

12 THE COURT: Government, any objections to the findings
13 of fact?

14 MS. ESPINOSA: No, your Honor.

15 THE COURT: I hereby adopt the findings of fact in the
16 presentence report. Mr. Schneider, I think you've said it.
17 It's mandatory life sentence here concurrent on Counts One and
18 Two, and I intend to impose the conditions set forth requested
19 by the probation department.

20 Is there a forfeiture order that I've signed here?
21 What's the position of the government with regard to
22 forfeiture?

23 MS. ESPINOSA: Your Honor, there is no forfeiture that
24 we're seeking here. We would ask for 90 days on restitution.
25 There may be a small amount of restitution we will seek, but

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1 we'll confer with defense before. We just ask for 90 days to
2 complete that.

3 THE COURT: Defense, any objection to that?

4 MR. SCHNEIDER: No.

5 THE COURT: I'll give the government -- I'll give them
6 90 days to submit an agreed upon restitution order. But submit
7 it before 90 days if you're going to have it. All right?

8 MS. ESPINOSA: We'll do our best, your Honor.

9 THE COURT: And if there are competing orders,
10 obviously get them in before 90 days. That's my intention. I
11 think you're entitled to my current view.

12 With all of that in mind, Mr. Schneider, what would
13 you like to tell me?

14 MR. SCHNEIDER: Your Honor, may I remain seated?

15 THE COURT: Of course.

16 MR. SCHNEIDER: Thank you so much. Appreciate it.
17 There are no surprises here. I understand that, and there's no
18 suspense. I think I do disagree with one thing your Honor
19 said. It's a mandatory life count for Count Two. Count One is
20 not a mandatory life count. It's a guideline recommendation
21 with no mandatory minimum, so your Honor can give less, and I
22 will discuss that in a few moments.

23 THE COURT: You're quite right. The mandatory is for
24 Count Two, murder in aid of racketeering, and not for
25 racketeering conspiracy. You're right. What would the import

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1 of that be?

2 MR. SCHNEIDER: Well, the import would be any number
3 of things. Number one, if by some chance Count Two gets
4 reversed, Count One, there's a different sentence. If there's
5 an issue down the road with a motion for compassionate release,
6 that could be effected. If down the road there's a change in
7 the law, that can be effected. So that's why your Honor has
8 some discretion with Count One, but not Count Two, so that's
9 why I think it does matter.

10 (Continued on next page)

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1 THE COURT: OK.

2 MR. SCHNEIDER: Now, even though I recognize what the
3 law is, it's our position that --

4 THE COURT: What is the guideline, not mandatory? The
5 guideline range is life, right?

6 MR. SCHNEIDER: It's 43. Yes, it's life, correct.
7 Again, not mandatory, just as your Honor --

8 THE COURT: Advisory. I understand that.

9 MR. SCHNEIDER: Correct. I want to make sure I
10 understand. Count Two is mandatory. Count One is a
11 recommendation of life, but not mandatory.

12 THE COURT: Right.

13 MR. SCHNEIDER: OK.

14 THE COURT: We're agreed.

15 MR. SCHNEIDER: Thank you.

16 I guess my concern, your Honor, is to have a life
17 sentence in general is something that just doesn't seem fair
18 because the consider the individual calculations or individual
19 characteristic traits of a person under 3553(a). It doesn't
20 really evaluate who the person was, is, and more importantly,
21 who he will be. I think the important part is that it doesn't
22 allow for rehabilitation. It doesn't allow for hope. What if
23 at some point in the next five, ten, 15, 20, or 30 years,
24 Mr. Pabon is a model prisoner, is someone who has taken
25 courses, has done well, has done all kind of good things? It

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1 seems to me that would be an appropriate discretion at that
2 time for possible release, but in the situation as we have now
3 with mandatory life sentences, that doesn't exist, and I think
4 that's not really appropriate or doesn't seem just.

5 It also doesn't provide for the possibility that he
6 may be someone who in the future can contribute to society and
7 in the future may no longer be a danger to the society. So
8 that's what mandatory life doesn't really take into
9 consideration.

10 So one of the things we said in our sentencing
11 submission is that we wanted to paint a picture for who
12 Christian was, and we think you should know who he is even
13 though you don't have a choice.

14 He's someone with a heart condition since he's been a
15 child. He's had trouble in school since he's been also a young
16 child with language, with comprehension, with reading, with
17 speech, auditory issues, with memory issues. He's someone
18 who -- so while there's been no "technical abuse" in the
19 family, the way we all know of sexual abuse, physical abuse,
20 mental abuse, drug abuse, none of that, but there are a number
21 of conditions in his life that shaped who he is and a number of
22 events that you should be aware of which we mentioned in our
23 submission, but I'd like to just highlight a few of them.

24 He has a loving family. You read the letters. His
25 family is here.

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1 THE COURT: He has excellent relations with his
2 parents.

3 MR. SCHNEIDER: Yes.

4 THE COURT: And he lives with the family in
5 Pennsylvania.

6 MR. SCHNEIDER: Yes.

7 THE COURT: This is a case where he had a real chance
8 to get away from the streets, and unfortunately, either he ran
9 back to the streets or the streets reached up and grabbed him
10 in Pennsylvania and dragged him back to the streets.

11 MR. SCHNEIDER: All true. This is a different speech.
12 Normally, I make a speech about how the people have come from a
13 terrible upbringing; their parents were abusive, etc.

14 THE COURT: I've heard it.

15 MR. SCHNEIDER: You've heard it, like I said.

16 THE COURT: From you.

17 MR. SCHNEIDER: Unfortunately, too often for both of
18 us, to have to say it, for you to have to hear it. But the
19 fact is, although he has a loving family, the relationship, the
20 dynamics in that family was very complicated, and I'd rather
21 not go into it now, but your Honor has seen our submission.

22 Also, there is something that affected him
23 dramatically, and unfortunately went untreated for his whole
24 life, is that he saw -- he was present when he was a young
25 child, I think when he was ten years old with his family, where

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1 his mother was arrested, wrongfully arrested, put in jail. He
2 was taken away from them. Family members were handcuffed.

3 THE COURT: No, I read it. I know it all.

4 MR. SCHNEIDER: OK.

5 THE COURT: I know that incident and how it has
6 affected him and especially his mother.

7 MR. SCHNEIDER: Thank you.

8 It also affected him, because it's basically PTSD
9 untreated. Think as a young child how you deal with that,
10 seeing that happen to your family or mother. You're right, the
11 family did a good thing.

12 THE COURT: And they convey unwavering support for
13 him. That's paragraph 47. So that's all excellent. And he's
14 not married. He doesn't have children, so he doesn't have
15 those obligations that he has to be concerned about while
16 incarcerated. He can focus full time on becoming a better
17 person.

18 MR. SCHNEIDER: He doesn't have those obligations.
19 You also did see letters from his -- I think his cousin who
20 talked about the relationship with.

21 THE COURT: A lot of letters, as the report says, of
22 unwavering support.

23 MR. SCHNEIDER: Not just support, but our submission
24 had the actual letters from his family which talked about how
25 his nieces and nephews have a special bond with him.

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1 THE COURT: Yes.

2 MR. SCHNEIDER: Finally, your Honor, his cousin Jason,
3 who is about 20 years old, who was more like a brother to him
4 than a cousin, committed suicide out of nowhere in a very
5 violent way. He jumped in front of a train, which is just a
6 terrible thing to think about. And that, again, Mr. Pabon had
7 to deal with untreated, in a way that made him who he is to do
8 whatever he had to do.

9 So while his family is here and they have supported
10 him and will support him forever, also because of COVID and the
11 lockdowns and what he's had to experience, it just seems like
12 if your Honor had the discretion, I would have hoped that your
13 Honor would give him a sentence of less than life. Granted,
14 Count Two is mandatory life. And we do suggest, by the way,
15 that on Count One you give him a sentence of 17 years, and we
16 arrive at that because, you're right, in the government's
17 letter from August 31 when they talked about relative
18 culpability of the other people in the gangs, they did not
19 mention Marcos Espinal, Marcos Espinal was the other shooter
20 who was there at the time according to the government's own
21 witnesses. He pled guilty in state court, and he got a
22 sentence of 17 years. That was the sentence that could very
23 well have been appropriate had there not been a mandatory life
24 count here.

25 So all that being said, I would ask your Honor to give

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1 a mandatory life sentence because you have no choice, but on
2 Count One give him a sentence of 17 years, because in terms of
3 relative culpability, Marcus Espinal is the one who is the
4 closest to Christian Pabon in terms of what sentence he got.
5 So that's where we are right now. Once your Honor imposes
6 sentence, Ms. Macedonia and I have another application once
7 we're done here.

8 THE COURT: All right. What do you do with
9 paragraph 31, sir? Defendant has been disciplined several
10 times for incidents involving assault with serious injury,
11 disobeying an order, possessing a hazardous tool, using
12 drugs/alcohol, possessing drugs/alcohol two occasions,
13 destroying an item during a search, disruptive conduct, and
14 fighting. What do you do with that?

15 MR. SCHNEIDER: What do I do with that? I look at --
16 I'm a kind of a half full kind of guy, OK? There's no violence
17 there. There's no injury to anybody. There's no damage to
18 property. He didn't stab anybody or cut somebody. And as your
19 Honor knows full well, living in the hell hole of MDC in
20 general, separate and apart from COVID, separate and apart from
21 lockdowns, is a nightmare. Being someone who is --

22 THE COURT: That's why I'm -- without adopting the
23 "nightmare" phrase, that's one of the reasons I'd like to get
24 him out of there.

25 MR. SCHNEIDER: Well, I understand that and he

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1 recognizes that, but he's made that choice as an adult. So
2 that seems to me what he would like to do. When your Honor --
3 he understands that you're not going to do it, but he's aware
4 of his charges, and he's made that choice.

5 So paragraph 31 refers to living in a nightmarish
6 situation where he's branded as a gang member, and your Honor
7 knows there's other gang members there. There are other acts
8 of violence there. And unfortunately, you have to deal with
9 what you have to deal with. So am I justifying it, no? Am I
10 mitigating it? I hope, yes, because, again, those things,
11 while they are all violations -- again no injuries, no use of
12 the weapon --

13 THE COURT: I understand.

14 MR. SCHNEIDER: That's our view of paragraph 31, your
15 Honor.

16 THE COURT: All right. Thank you. Let me hear from
17 the government.

18 MS. ESPINOSA: Thank you, your Honor.

19 The government here thinks that a life sentence on
20 both counts as recommended by probation is sufficient, but not
21 greater than necessary, to serve the purposes of sentencing.
22 Here, the conduct for which the defendant was convicted is
23 incredibly, incredibly serious. It resulted in the murder of
24 an innocent man, Orlando Rivera, who just happened to be in the
25 wrong place at the wrong time.

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1 I won't belabor the trial record, your Honor. I'll
2 just note that the defendant was convicted for racketeering
3 conspiracy for his role in the 200, a violent street crew that
4 committed robberies, home invasions, drug dealing. The
5 defendant himself was a shooter in that gang. His role was to
6 commit acts of violence for the gang. And then on October 2,
7 2014, the defendant and other members of the 200 traveled to
8 193 territory, the rival crew's territory, with guns, opened
9 fire on a crowded public street in the early evening and struck
10 three people, including a fatal shot to Orlando Rivera.

11 Now, this particular indiscriminate act of violence is
12 really incredibly -- it's difficult to capture the severity of
13 this. This was not spur of the moment. This was not a heated
14 incident. This group of gang members, members of the 200,
15 including Pabon, traveled to 193 territory with guns, got out
16 of a car, walked up to the counter -- or to the corner, and
17 fired off at least 15 shots, knowing it was a crowded street,
18 there were children playing nearby, there were people
19 everywhere, and they were acting with complete disregard for
20 the lives of those people.

21 And the defendant was proud of his involvement in the
22 shooting. As the record showed at trial, he bragged about it.
23 He was happy that he had a body. It gave him street cred. It
24 gave him status in the gang.

25 THE DEFENDANT: They lied about that.

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1 THE COURT: You'll have an opportunity to address the
2 Court, Mr. Pabon.

3 MS. ESPINOSA: I mean --

4 THE DEFENDANT: They fuck the streets up. These are
5 people that lie on me.

6 THE COURT: Mr. Pabon, you'll have an opportunity to
7 address the Court. I'll give you a full opportunity, sir. I
8 gave your lawyer an opportunity. I now am giving the
9 government an opportunity, and then I'll give you.

10 THE DEFENDANT: Sorry, your Honor. They lied on me.
11 Those people lied on me.

12 THE COURT: Go ahead.

13 MS. ESPINOSA: As the evidence at trial showed, your
14 Honor, the defendant and other members of the 200 knew they
15 shot and killed an innocent bystander that day. They knew they
16 didn't hit a rival gang member, and they were still proud of
17 it. They weren't sorry for taking that life.

18 Your Honor, I'd like to spend a few minutes talking
19 about the victim, about Orlando Rivera. Your Honor saw the
20 incredibly heartbreaking statement from the victim's son.

21 THE COURT: I read it.

22 MS. ESPINOSA: And, your Honor, I think it is
23 important to sit and remember for a second that Orlando Rivera
24 was only 42 years old when he was killed that day. He was a
25 father. He was a son. He was a friend. He was a beloved

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1 member of his community, and because of the defendant's actions
2 that day, he never went home. He didn't get to see his son
3 grow up. Never got to meet his granddaughter. He never got to
4 hug his mother again. He never got to go to any of the parties
5 that his son referenced he loved going to. All of those
6 moments, big and small, of his life were taken away because of
7 the defendant's actions.

8 I think that's the point we want to end on, your
9 Honor, because of those actions, because of the murder of
10 Orlando Rivera that was just so incredibly senseless, a life
11 sentence on both counts is appropriate here.

12 THE COURT: All right. Thank you.

13 Mr. Pabon, you have the opportunity to address me,
14 sir. You don't have to say anything. And I do wish to tell
15 you that anything you say can be used against you, but I'm here
16 to listen to whatever you want to say. I presided over the
17 trial. I remember the trial quite well. Please, sir, if you
18 wish to address me, now is the time.

19 THE DEFENDANT: I just want to apologize to my family.
20 There was a lot of charges they found me guilty of that I
21 wasn't guilty of. Those people lied on me. And like I said, I
22 just want to say I'm sorry to my family. I love my family, and
23 I'm a good man. I'm not the man that they're portraying me to
24 be. That's all I got to say, your Honor.

25 THE COURT: Thank you, sir. I appreciate that.

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1 All right. Please rise, and I will impose sentence.

2 Before I formally impose sentence, first, I want to
3 adopt the findings of fact. I believe I already did so, but if
4 I did not, I now do.

5 Secondly, I wish to ask the defense if there's any
6 formal objection they wish to lodge before I impose sentence,
7 Mr. Schneider?

8 MR. SCHNEIDER: No.

9 THE COURT: Ms. Macedonio?

10 MS. MACEDONIO: No.

11 THE COURT: I hereby find that the total offense is
12 43, the criminal history category is II, the guideline range is
13 life on each count, and as Mr. Schneider properly said,
14 appropriately said, it's mandatory life under the statute on
15 Count Two.

16 The sentence that I am imposing pursuant to the
17 Sentencing Reform Act of 1984 is the judgment of this Court
18 that the defendant, Christian Pabon, is committed to the
19 custody of the Bureau of Prisons to be imprisoned for a term of
20 360 months on Count One and life on Count Two, to be served
21 concurrently. So that's a below life sentence on Count One,
22 and it's a variance.

23 The reason is Count One is racketeering conspiracy,
24 and Count Two is murder in aid of racketeering, which is
25 reflected in the statutory requirement that in this case it

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1 would be mandatory life. Congress viewed it as a more serious
2 crime, racketeering conspiracy, especially one which led to the
3 defendant firing that weapon. I saw videos of it. Killing
4 Rivera in the way he did is -- I think the word is quite right,
5 it was horrific. Nonetheless, I think life on Count One is
6 greater than necessary to meet the ends of the criminal justice
7 system.

8 So it's going to be 360 on Count One and life on Count
9 Two to be served concurrently.

10 Upon release from imprisonment, Mr. Pabon shall be
11 placed on supervised release for a term of five years on each
12 count to run concurrently with the conditions recommended by
13 the probation department, namely, he shall serve those five
14 years of supervised release with the mandatory conditions that
15 are set forth on page 36 of the presentence report. He also
16 shall comply with the standard conditions set forth on page 36
17 and 37 of the presentence report. That's standard conditions 1
18 through 12.

19 Within 72 hours of release from the custody of the
20 Bureau of Prisons, Mr. Pabon shall report in person to the
21 probation office in the district in which he is released. He
22 shall also comply with the special conditions set forth on
23 pages 37 and 38 of the presentence report, that is,
24 participation in an outpatient treatment program is one. Two
25 is the search condition. Three is he must provide his

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1 probation officer with access to all requested financial
2 information.

3 And I'm going to change special condition No. 4 as
4 follows: He shall not associate or interact in any way,
5 including through social media, websites with any members and
6 associates of the 200 gang and the Bloods gang, specifically
7 the Sex Money Murder set of the Bloods gang, or frequent
8 neighborhoods known to be controlled by the 200 or the Sex
9 Money Murder set of the Bloods gang. So I'm narrowing that a
10 bit.

11 I recommend that he be supervised by the district of
12 residence.

13 I'm not imposing a fine, because I find Mr. Pabon
14 lacks the ability to pay a fine, taking into account his
15 limited earning ability and his lack of assets and his modest
16 income.

17 I'm giving the government -- I'm giving the parties 90
18 days in which to submit a proposed restitution order. I'm not
19 imposing forfeiture because none is being sought by the
20 government.

21 I hereby order Mr. Pabon to pay to the United States a
22 special assessment of \$200, which is due immediately.

23 My reason for the sentence is I have sentenced the
24 defendant at the guideline range on Count Two, murder in aid of
25 racketeering, which is mandatory life, and on Count One, I have

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1 sentenced him to 360 months, which is a downward variance from
2 the guideline range of life because I believe it is sufficient,
3 but not greater than necessary, to meet the ends of the
4 criminal justice system given, in part, the promise I believe
5 the defendant has to lead a law-abiding life if he is released
6 from prison and the strong family support he has at this time.

7 What's the recommendation you're asking for, sir, at
8 this point in regard to anything?

9 MR. SCHNEIDER: Yes, thank you.

10 We have spoken to Mr. Pabon, and he would like to ask
11 your Honor to recommend to the Bureau of Prisons that he be
12 designated to a facility either in or as close to Pennsylvania
13 as possible to make his family easier to visit.

14 THE COURT: I'll recommend that he be housed in the
15 northeast region in order to facilitate visits with his family
16 which resides in Pennsylvania. I also recommend that he not be
17 sent to his permanent place of designation for at least 60 days
18 from the entry of the judgment in this case in order to
19 facilitate both the designation to a permanent facility and
20 also to assist in facilitating family visits that Mr. Pabon
21 wants to have prior to his being sent to the permanent place of
22 designation.

23 Mr. Schneider, are you aware of any legal reason why
24 this sentence should not be imposed as I have stated it?

25 MR. SCHNEIDER: No, sir.

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1 THE COURT: Ms. Espinosa?

2 MS. ESPINOSA: No, your Honor.

3 THE COURT: Is there anything -- I'm sorry. I hereby
4 order the sentence to be imposed as I have stated it.

5 Is there anything in our discussion at the beginning
6 of the case that the parties ask me to recommend, or have I
7 taken care of that by virtue of talking about his being kept at
8 the MDC now?

9 MR. SCHNEIDER: I think we're all good, your Honor.
10 Thank you.

11 THE COURT: All right. Thank you.

12 Mr. Pabon, you have the right to appeal the sentence I
13 have imposed on you. If you cannot pay the cost of an appeal,
14 you have the right to apply for leave to appeal *in forma*
15 *pauperis*. If you make a request, the clerk of court will
16 prepare and file a notice of appeal on your behalf immediately.

17 Do you understand your appeal rights, sir?

18 THE DEFENDANT: Yeah, I understand.

19 THE COURT: All right. Are there any open counts,
20 underlying instruments here?

21 MS. ESPINOSA: Yes, your Honor. The government moves
22 to dismiss open counts against this defendant.

23 THE COURT: All right. I grant that motion.

24 Mr. Pabon, I don't know really what to tell you. The
25 evidence against you was very strong. I remember those videos.

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1 I've read all of this information. I remember the videos with
2 you. I remember your nickname, "Banga." I remember the
3 evidence that you were bragging about the shooting. I see the
4 issues you've had while incarcerated. You've got to put all
5 that behind you. You've got to accommodate yourself to the
6 fact that you're going to be incarcerated now for a substantial
7 period of time. If you keep fighting the restrictions upon
8 you, it's not going to make sense. You're going to spend --
9 the Bureau of Prisons people are going to put you in segregated
10 housing, solitary housing. It just doesn't make sense.

11 I really urge you to use the time in prison, at this
12 point it's the rest of your life, as effectively as you can.
13 Stay in touch with your family. You've got a GED?

14 THE DEFENDANT: High school diploma.

15 THE COURT: Just get additional education. Go and do
16 it. Make your life better. Assist other people there. Occupy
17 your time with reading, with exercise, with educational
18 courses, with vocational courses. It doesn't have to be you
19 just sitting around wasting decades. I urge you not to do
20 that. Just use your time as effectively as you can, sir.

21 All right. Thank you all.

22 MR. SCHNEIDER: Your Honor, I'm sorry. There's one
23 final thing, if I may.

24 THE COURT: Yes.

25 MR. SCHNEIDER: Yes, while Ms. Macedonia and I will

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1 certainly make sure that Mr. Pabon's appellate rights -- we'll
2 file a notice of appeal. We ask that we would be relieved. We
3 spoke to Mr. Pabon before, and I guess there were kind of two
4 issues here. One is that there are things that Mr. Pabon
5 thinks that we may have either done or didn't do that may raise
6 effective issues or ineffective issues. And the second thing,
7 just generally speaking, I think when someone's been convicted
8 at a trial and gets a life sentence, it makes sense to have
9 fresh eyes on the transcript to make sure that --

10 THE COURT: I don't disagree with that, sir, but I
11 don't want to leave him unrepresented for a moment.

12 MR. SCHNEIDER: No.

13 THE COURT: Isn't that an appointment made by the
14 circuit court?

15 MR. SCHNEIDER: Yes, but I want to be clear that your
16 Honor doesn't oppose that. In other words, we're saying that
17 we will file the notice of appeal, and at some point when we
18 are notified, either Ms. Macedonia or I will then make that
19 motion. But I just wanted to alert the Court so there's no
20 issue down the road that your Honor specifically said that we
21 can't make that application. That's all I'm saying.

22 THE COURT: You can make the application, but my
23 concern is to make sure he's always represented by competent
24 counsel, and you certainly are competent counsel.

25 MR. SCHNEIDER: I agree a thousand percent, yes. We

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1 will make sure he's always represented by counsel at every
2 moment, yes.

3 THE COURT: OK. Thank you all.

4 MR. SCHNEIDER: Thank you.

5 (Adjourned)